

JUNE 6, 2001

MEMORANDUM FOR HEADS OF CONTRACTING OFFICES

FROM: Helen Hurcombe, Director
Acquisition and Grants Office

SUBJECT: Implementation of Section 508 of the Rehabilitation Act of 1973, 1998 Amendments

In December 2000, the Architectural and Transportation Barriers Compliance Board (Access Board), pursuant to Section 508 (a)(2)(A) of the Rehabilitation Act Amendments of 1998 (29 U.S.C. § 794 (d)) as enacted in the Workforce Investment Act of 1998, established information technology accessibility standards for the federal government. (The Access Board is an independent Federal agency established by Section 502 of the Rehabilitation Act (29 U.S.C. 792) whose primary mission is to promote accessibility for individuals with disabilities.) These standards become effective June 21, 2001. In order to maintain consistency between June 21, 2001, the effective date of the standards, and the effective date of the Federal Acquisition Regulation coverage (June 25, 2001), NOAA plans to comply with the Section 508 acquisition regulations on June 21, 2001.

The Rehabilitation Act Amendments require that procurement activities implement the standards through acquisition processes. This memorandum provides NOAA Acquisition Offices with recommended means to implement Section 508. You are free to modify these as you deem appropriate. This memorandum is pursuant to Section 508 FAR Final Rule (Federal Acquisition Circular 97-27) published April 25, 2001.

Section 508 requires that when Federal agencies develop, procure, maintain, or use electronic and information technology (EIT), Federal employees with disabilities have comparable access to and use of information and data as Federal employees who have no disabilities, unless an undue burden would be imposed on the agency. Section 508 also requires that individuals with disabilities, who are members of the public seeking information or services from a Federal agency, have comparable access to and use of information and data as the public without disabilities, unless an undue burden would be imposed on the agency.

Although Federal agencies have an explicit statutory obligation to make all EIT that they “develop, maintain or use” compliant with Section 508, the current emphasis is on “procured” EIT because it is the category that is explicitly enforceable by legal action.

It is important that procurement customers consider EIT standards compliance at the advanced planning stage for requirements. Make maximum use of the exceptions to compliance, as appropriate. To the extent feasible, issue draft solicitations to secure industry feedback.

Management of Section 508 within procurement activities is critical since bid protests are expected to be the primary venue for enforcing Section 508 by competing firms.

Although this memorandum will provide guidance, GSA is working with industry to establish Section 508 compliance testing standards that could be used by the American National Standards Institute (ANSI) or the International Standards Organization (ISO). If successful, this means of determining compliance will significantly simplify the processes shared in this memorandum. Such consensus standards are not expected by the FAR Final Rule effective date of June 25, 2001. There will be no federal government listing of compliant products due to “endorsement liability.” NOAA does plan, however, to provide a list of products that have been identified as compliant on the NOAA Section 508 website (<http://www.rdc.noaa.gov/~irm/#4>) to simplify the market research process. This list is NOT meant as an endorsement of these products but is merely information gathered through market research. As your staff identifies additional compliant products, this information should be provided to the NOAA Section 508 Coordinator, Natalie Smith. Contracting offices that award IDIQ contracts must identify to requiring and ordering activities which supplies and services the contractor indicates as compliant and show where full details of compliance can be found.

Section 508 does not apply to the following acquisition conditions:

- (1) Taking delivery for items ordered prior to June 21, 2001;
- (2) Contracts awarded before June 21, 2001, including option year renewals;
- (3) IDIQ contracts (including FSS, GWACS, Interagency Agreements, etc.) provided that requiring and ordering activities ensure 508 compliance prior to placing an order or document an exception;
- (4) Within-scope modifications of contracts awarded before June 21, 2001;
- (5) Exercising unilateral options for contracts awarded before June 21, 2001;
- (6) Multiyear contracts awarded before June 21, 2001; and
- (7) Subcontracts.

Exception determinations are not required for award of indefinite quantity contracts (except for requirements that are to be satisfied by initial award), even though ordering activities must ensure section 508 compliance at time of issuance of task or delivery orders. Accordingly, indefinite quantity contracts may include noncompliant items, provided that any task or delivery order issued for noncompliant EIT meets an applicable exception.

Section 508 procurement compliance requirements do apply to:

- (1) EIT acquired through any contracts awarded on or after June 21, 2001;
- (2) Task or delivery orders placed on or after June 21, 2001, against any IDIQ contract irrespective of the award date of the underlying contract;
- (3) Upgrades of EIT supplies and services for the purpose of adding new features or functionality;
- (4) New contracts (maintenance, support, functionality and feature changes, etc.) for legacy systems (undue burden justifications may be needed);
- (5) Procurement ordering against UNICOR, NIB/NISH, and Economy Act sources; and
- (6) Overseas acquisitions unless the procuring agency has a legislative exemption to the FAR overseas.

It is critical to note that procurement awards made on or after June 21st are subject to Section 508. **Hence, solicitations, RFQs, etc., for EIT subject to Section 508 that are at any process stage that will result in award on or after June 21st should be amended to include Section 508 provisions.**

EIT that is standalone and for common use, such as photocopiers and fax machines, must have built into them all applicable technical features permitting compliance. Immediate attention should be given to replacing them at the earliest convenient opportunity before June 21, 2001, if such coincides with the replacement schedule.